

**Lifeline Mobile Medics, Inc. and Laborers' International Union of North America, AFL-CIO, Local 362, Petitioner.** Case 33-RC-3471

September 30, 1992

**DECISION ON REVIEW AND ORDER  
REMANDING**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

On August 6, 1991, the Regional Director for Region 33 issued a Third Supplemental Decision on Challenged Ballots in which he concluded, applying a community-of-interests test, that the Employer's two office clericals<sup>1</sup> should be excluded from the petitioned-for unit of the Employer's emergency medical technicians (EMTs)<sup>2</sup> and sustained the challenges to their ballots. The Employer filed a timely request for review and the Petitioner filed an opposing brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has duly considered this matter and has decided to grant review, reverse the Regional Director, and remand to the Regional Director to count the two ballots in dispute and for further appropriate action, for reasons set forth below.<sup>3</sup>

The Regional Director found that the Employer, an ambulance service, is a health care institution under

Section 2(14) of the National Labor Relations Act.<sup>4</sup> In *Park Manor Care Center*, 305 NLRB 872 (1991), which issued after the Regional Director's decision here, the Board found that the appropriate test for determining the appropriate unit in a nonacute care health care institution is an empirical community-of-interest test. Under that test, the Board considers community-of-interest factors, as well as those factors considered relevant by the Board in its rulemaking proceedings on Collective-Bargaining Units in the *Health Care Industry*, 284 NLRB 1528 (1988), and 284 NLRB 1580 (1989), the evidence presented during rulemaking with respect to units in acute care hospitals, and prior cases involving either the type of unit sought or the type of health care facility in dispute. In remanding *Park Manor* to the Regional Director for application of this test, the Board observed that, if the employees excluded by the Regional Director could not themselves constitute a separate unit, they must perforce be included in the broader unit. 305 NLRB 872 at 12 fn. 18.

Here, Mertel and Carlson are the Employer's only regular office clericals.<sup>5</sup> As the Board stated in the Rulemaking proceeding, units of two or more employees, or similarly small numbers of employees, would in many cases be impractically small, especially in the health care industry, 284 NLRB at 1588, and a petitioned-for unit of five employees or fewer would automatically trigger the extraordinary circumstances exception. Id. and fn. 5. Here, Mertel and Carlson are the only employees remaining apart from the Employer's approximately 25 EMTs.<sup>6</sup>

Applying standard community-of-interest factors, we find a closer relationship between the Employer's office clericals and the EMT unit than was found between business office clericals (BOCs) and other non-professionals considered in the Rulemaking.<sup>7</sup> Unlike the BOCs analyzed in the Rulemaking whose work responsibilities are generally limited to finance, billing, and insurance; who do not engage in patient care; and who have no responsibility for physical or environmental health, 284 NLRB at 1562, Mertel and Carlson perform hybrid functions—a combination of office clerical and dispatching work. The dispatching portion of their work involves trying to learn the condition of

<sup>1</sup>On April 11, 1991, the Board (Chairman Stephens, Member Devaney; Member Cracraft dissenting) issued an Order granting the Employer's request for review of the Regional Director's Second Supplemental Decision on Challenged Ballots and Objections and finding, inter alia, in agreement with the Regional Director, that dispatcher Marcia Mertel and billing clerk Tamara Carlson are office clerical employees. Their status as office clericals is therefore not at issue here. Mertel spends 50 percent of her time handling telephone calls and dispatching ambulances and the remainder of her time doing aid billing and helping Carlson with other patient billing. Carlson's primary responsibility is handling finance, billing, and insurance, but she has trained for dispatching work with Mertel and fills in for Mertel about an hour a day.

<sup>2</sup>The following is the unit found appropriate:

All full-time and regular part-time emergency medical technicians-paramedics, emergency medical technicians-intermediate, emergency medical technicians-ambulance, and registry emergency medical technicians employed by the Employer at its facilities in Bloomington and Normal, Illinois, but excluding senior paramedics, dispatcher, billing clerk, office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Regional Director found that the Employer's EMTs are technical employees. Since no party here disputes the Regional Director's finding in this regard, we have assumed they are technicals for purposes of this case.

<sup>3</sup>The Regional Director found that if, after the issuance of a revised tally of ballots (whether or not the Board finds that the ballots of the office clericals be opened and counted), the Petitioner does not receive a majority of the valid votes cast, the election will be set aside and a second election conducted consistent with the Board's Order of April 11, 1991.

<sup>4</sup>No party has requested review of this finding.

<sup>5</sup>The Employer also employs a registry office dispatcher, Simmons, who did not participate in the election and whose status is not at issue.

<sup>6</sup>Contrary to the Petitioner's contention, the court in *NLRB v. Hillview Health Care Center*, 705 F.2d 1461 (7th Cir. 1983), did not find that a maximum of two bargaining units (the situation here) can never constitute undue proliferation. Although the court found in that case that the two units did not constitute proliferation, the court opined that a different result might be required under different facts.

<sup>7</sup>In the Rulemaking proceeding, the Board determined that BOCs in acute care hospitals constituted a separate appropriate unit. 284 NLRB at 1562.

the patient in order to convey relevant information to the EMTs, which relates to the physical health of the patients. Indeed, on at least one occasion, Mertel gave cardiopulmonary resuscitation instructions to a caller on the telephone. The dispatching work also requires frequent radio communication with the EMTs and contact to rectify errors on run reports, in contrast to the lack of contact between standard BOCs and other non-professionals in acute care hospitals. See 284 NLRB at 1563.

Moreover, the dispatching portion of their jobs is integrated with the duties of the EMTs. The Employer has contracted with a telephone answering service to provide dispatching during the hours not covered by Mertel and Carlson. However, the EMTs perform what amounts to informal dispatching during the answering service hours. If the EMTs believe they have not received enough information from the answering service, the unit not responding will call back the patient or person who called in and try to learn more information, which lets the EMTs know whether a closer unit should respond if additional help is needed. If the answering service dispatches a unit that is not the closest, the closest unit will step in. Thus, it is apparent that the nature of the dispatching task is intimately related to, and in some respects a part of, the EMTs' duties. As a result of the hybrid nature of the clericals' work, the basis for excluding Mertel and Carlson from a unit with the EMTs is not as strong as if they did only billing and other typical office clerical work. In addition, the small size of the Employer's work complement and the limited number of positions has narrowed staffing diversity.

While BOCs in acute care hospitals may have special clerical training and constant retraining, 284 NLRB at 1562–1563, there is no indication that either Mertel or Carlson had such training or are retrained. Certification is not a job factor for BOCs. Although the Employer does not require EMT certification for all persons handling its dispatching work,<sup>8</sup> Mertel is a certified EMT<sup>9</sup> and has apparently kept up the necessary education to continue certification. Additionally, Mertel and Carlson have overlapping wages with the EMTs.

The Petitioner contends that, like BOCs in the Rulemaking, 284 NLRB at 1563, Mertel and Carlson have separate firstline supervision. However, traditional BOCs also generally have a separate hierarchy of supervision with ultimate supervision by a financial administrator. 284 NLRB at 1563. It is undisputed that

Mertel and Carlson are directly supervised by the Employer's director who constitutes the entire "hierarchy" of supervision for the clericals. Two paramedic supervisors supervise the EMTs. While the evidence is unclear whether the director also engages in firstline supervision of the EMTs, at a minimum the director provides the only other level of supervision for the EMTs and overall supervision for both clericals and EMTs. It is undisputed that the director changed wage increases for EMTs recommended by the EMT supervisors. Unlike the BOCs in the Rulemaking, 284 NLRB at 1563, there is no evidence that Mertel's and Carlson's work is closely monitored.

Mertel and Carlson do not appear to be as physically isolated as BOCs in many acute care hospitals, some of whom are located in buildings apart from their employer's health care facility. 284 NLRB at 1563. EMTs at the Employer's base location in Bloomington, which has an office and a garage for an ambulance, are stationed in an area adjoining the office area where Mertel and Carlson are located, and all EMTs rotate through this location from the Employer's other two locations at metropolitan area hospitals. While it is unclear if this results in job-related interaction (dispatching still seems to be done by radio or telephone), the close proximity is another factor supporting a community of interest. In addition, the office clericals and EMTs jointly attend staff meetings.

Career paths and job mobility appear to be less distinct for the office clericals here than for the BOCs in the Rulemaking.<sup>10</sup> BOCs in acute care hospitals were found to have few avenues of advancement in a health care facility. They have an external job market. By contrast, Mertel has kept her EMT certification and presumably could go back to EMT work if her health improved. As indicated, EMTs also provide informal dispatching during the times the answering service handles dispatching. Carlson has "moved up" in the office area by learning dispatching.

In addition to the factors listed in the Rulemaking regarding BOCs, the Board normally considers evidence of transfers in determining community of interest. While there is no evidence of a formal transfer procedure between office clericals and EMTs here, Mertel was given an office clerical job when she could no longer perform EMT work because of a job-related injury.

There is no definitive pre-Rule precedent regarding units in ambulance services or inclusion of office clerical-dispatchers in units with EMTs.

The foregoing convinces us that Mertel and Carlson should be included in the bargaining unit with the Employer's EMTs. Although there is evidence of separate

<sup>8</sup>The Employer's job description for dispatcher requires EMT certification, but Carlson is not certified.

<sup>9</sup>Mertel was an EMT-A with the Employer before an injury prevented her from continuing to do the EMT work. Simmons, the registry clerical, was also an EMT with the Employer before an injury, but has not kept up her certification.

<sup>10</sup>The Board found that BOCs' salaries are based on the outside clerical market. There is no evidence regarding how the Employer derived office clerical salaries.

immediate supervision between the clericals and the EMTs, the Employer lacks the separate hierarchy of supervision found in the Rulemaking. In any event, the small number of clericals, integrated nature of the work, high degree of contact, overlapping wages, close proximity of work stations, intertwining job mobility, and transfer of Mertel from EMT to clerical work, far

outweighs that factor. We therefore overrule the challenges to the ballots of Mertel and Carlson.

#### ORDER

This case is remanded to the Regional Director to open and count the overruled challenged ballots and for further processing in conformity with this decision.